

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY )	
AVERAGE WHOLESALE PRICE )	MDL NO. 1456
LITIGATION )	Civil Action No. 01-12257-PBS
)	
THIS DOCUMENT RELATES TO:	) Judge Patti B. Saris
)	
The City of New York v. Abbott Labs., et al.)	
(S.D.N.Y. No. 03-CV-06054)	)
County of Suffolk v. Abbott Labs., et al. )	
(E.D.N.Y. No. CV-03-229)	)
County of Westchester v. Abbott Labs., et al.)	
(S.D.N.Y. No. 03-CV-6178)	)
County of Rockland v. Abbott Labs., et al. )	
(S.D.N.Y. No. 03-CV-7055)	)
County of Putnam v. Abbott Labs, et al. )	
(S.D.N.Y. No. 05-CV-04740)	)
County of Dutchess v. Abbott Labs, et al. )	
(S.D.N.Y. No. 05-CV-06458)	)
County of Putnam v. Abbott Labs, et al. )	
(S.D.N.Y. No. 05-CV-04740)	)
County of Washington v. Abbott Labs, et al. )	
(N.D.N.Y. No. 05-CV-00408)	)
County of Rensselaer v. Abbott Labs, et al. )	
(N.D.N.Y. No. 05-CV-00422)	)
County of Albany v. Abbott Labs, et al )	
(N.D.N.Y. No. 05-CV-00425)	)
County of Warren v. Abbott Labs, et al. )	
(N.D.N.Y. No. 05-CV-00468)	)
County of Greene v. Abbott Labs, et al. )	
(N.D.N.Y. No. 05-CV-00474)	)
County of Saratoga v. Abbott Labs, et al. )	
(N.D.N.Y. No. 05-CV-00478)	)

[Caption Continues on Next Page ]

**IVAX CORPORATION, IVAX PHARMACEUTICALS, INC. AND BARR  
LABORATORIES, INC.'S JOINT RENEWED MOTION TO DISMISS THE NEW  
YORK COUNTIES' FIRST AMENDED CONSOLIDATED COMPLAINT ON THE  
GROUND THAT THEY WERE PREVIOUSLY DISMISSED FROM THIS CASE  
PURSUANT TO THE COURT'S "SUFFOLK 13" DECISION**

County of Columbia v. Abbott Labs, et al. )  
 (N.D.N.Y. No. 05-CV-00867) )  
 Essex County v. Abbott Labs, et al. )  
 (N.D.N.Y. No. 05-CV-00878) )  
 County of Ulster v. Abbott Labs, et al. )  
 (N.D.N.Y. No. 05-CV-00123) )  
 County of Chanango v. Abbott Labs, et al. )  
 (N.D.N.Y. No. 05-CV-00354) )  
 County of Broome v. Abbott Labs, et al. )  
 (N.D.N.Y. No. 05-CV-00456) )  
 County of Onondaga v. Abbott Labs, et al. )  
 (N.D.N.Y. No. 05-CV-00088) )  
 County of Tompkins v. Abbott Labs, et al. )  
 (N.D.N.Y. No. 05-CV-00397) )  
 County of Cayuga v. Abbott Labs, et al. )  
 (N.D.N.Y. No. 05-CV-00423) )  
 County of Madison v. Abbott Labs, et al. )  
 (N.D.N.Y. No. 05-CV-00714) )  
 County of Cortland v. Abbott Labs, et al. )  
 (N.D.N.Y. No. 05-CV-00881) )  
 County of Herkimer v. Abbott Labs, et al. )  
 (N.D.N.Y. No. 05-CV-00415) )  
 County of Oneida v. Abbott Labs, et al. )  
 (N.D.N.Y. No. 05-CV-00489) )  
 County of Fulton v. Abbott Labs, et al. )  
 (N.D.N.Y. No. 05-CV-00519) )  
 County of St. Lawrence v. Abbott Labs, et al.)  
 (N.D.N.Y. No. 05-CV-00479) )  
 County of Jefferson v. Abbott Labs, et al. )  
 (N.D.N.Y. No. 05-CV-00715) )  
 County of Lewis v. Abbott Labs, et al. )  
 (N.D.N.Y. No. 05-CV-00839) )  
 County of Chautauqua v. Abbott Labs, et al. )  
 (W.D.N.Y. No. 05-CV-06204) )  
 County of Allegany v. Abbott Labs, et al. )  
 (W.D.N.Y. No. 05-CV-06231) )  
 County of Cattaraugus v. Abbott Labs, et al. )  
 (W.D.N.Y. No. 05-CV-06242) )  
 County of Genesee v. Abbott Labs, et al. )  
 (W.D.N.Y. No. 05-CV-06206) )  
 County of Wayne v. Abbott Labs, et al. )  
 (W.D.N.Y. No. 05-CV-06138) )  
 County of Monroe v. Abbott Labs, et al. )  
 (W.D.N.Y. No. 05-CV-06148) )  
 County of Yates v. Abbott Labs, et al. )  
 (W.D.N.Y. No. 05-CV-06172) )

County of Niagara v. Abbott Labs, et al.	)
(W.D.N.Y. No. 05-CV-06296)	)
County of Seneca v. Abbott Labs, et al.	)
(W.D.N.Y. No. 05-CV-06370)	)
County of Orleans v. Abbott Labs, et al.	)
(W.D.N.Y. No. 05-CV-06371)	)
County of Ontario v. Abbott Labs, et al.	)
(W.D.N.Y. No. 05-CV-06373)	)
County of Schuyler v. Abbott Labs, et al.	)
(W.D.N.Y. No. 05-CV-06387)	)
County of Wyoming v. Abbott Labs, et al.	)
(W.D.N.Y. No. 05-CV-06739)	)
County of Chemung v. Abbott Lab, et al.	)
(W.D.N.Y. No. 05-CV-06744),	)
	)
AND	)
	)
County of Nassau v. Abbott Labs, et al.	)
(E.D.N.Y. No. 04-CV-5120)	)
	)

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Ivax Corporation and Ivax Pharmaceuticals, Inc. (collectively “Ivax”) and Barr Laboratories, Inc. (“Barr”) hereby join the consolidated motion to dismiss and memorandum filed by all defendants. Ivax and Barr file this separate individual motion to highlight and renew their joinder in the prior joint memorandum in support of the motion to dismiss the New York Counties’ Consolidated Complaint and Nassau Counties’ Second Amended Complaint. *See In re Pharmaceutical Indus. AWP Litig.*, Docket No. 2207 (D. Mass. Mar. 3, 2006).

In that motion, the defendants reiterated that this Court had previously dismissed Ivax from this case in its initial ruling as to the “Suffolk 13” defendants. *See In re Pharmaceutical Indus. AWP Litig.*, 2004 WL 2387125, at \*3 (D. Mass. Oct. 26, 2004) (“The Court *ALLOWS* . . . the motion to dismiss all claims against defendants . . . Ivax Corporation and Ivax Pharmaceuticals, Inc.”) (emphasis in original). Similarly, this Court dismissed the Best Prices claims as against Barr in that same order, *see id.*, and thereafter dismissed all remaining claims

against Barr and the other “Suffolk 13” defendants. *See County of Suffolk v. Abbott Labs*, Docket No. 1482 (D. Mass. Apr. 8, 2005).

As explained in the joint memorandum on this subject, this Court has already dismissed Ivax and Barr from this case. This Court did not address the issue in its April 2, 2007, Memorandum and Order and the New York Counties filed this new amended complaint, including the “Suffolk 13” defendants. But this Court specifically addressed the status of the “Suffolk 13” defendants during oral argument on the motions to dismiss, stating “I thought I threw [the complaint against the Suffolk 13 defendants] out. I reread [the Court’s prior decisions concerning the Suffolk 13] yesterday.” June 16, 2006 Oral Argument Tr. at 64:4-5.

Of course, this Court did indeed correctly recall that all claims against the “Suffolk 13” defendants, including Ivax and Barr, were dismissed. Accordingly, to the extent the First Amended Consolidated Complaint raises any claims as against Ivax or Barr, those claims should be dismissed with prejudice.

Dated: June 22, 2007

Respectfully submitted,

/s/ Pamela Zorn Adams

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### **CERTIFICATE OF SERVICE**

I hereby certify that on June 22, 2007, I caused a true and correct copy of the foregoing to be served on all counsel of record by electronic service pursuant to Case Management Order No. 2 entered by the Honorable Patti B. Saris in MDL 1456.

/s/ Pamela Zorn Adams  
Pamela Zorn Adams